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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,194	10/30/2001	Robert D. Sheldon	021556.0137	9458

7590

06/10/2005

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EXAMINER

KOSTAK, VICTOR R

ART UNIT

PAPER NUMBER

2614

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/021,194

**Applicant(s)**

SHELDON ET AL.

**Examiner**

Victor R. Kostak

**Art Unit**

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 7 and 10-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7 and 10-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. Applicant's is reminded of rule 111(b) which addresses requirements when adding claims in an amendment. This rule states the following: *"The reply [by an applicant] must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references."*

Applicant has added new claims 26-31 but only says that they contain no new matter. Applicant has not stated how the claim language distinguishes from the applied art as required by rule 111(b).

2. Claim 30 is objected to because of the following informalities: in the first line, "operableas" should be separated into two words, and in the second line "a" (first occurrence) should be deleted. Appropriate correction is required.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 30 is also rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is indefinite because it ends with an open-ended conjunction (i.e. "and"). For examination purposes, it has been viewed as only containing the explicitly recited features.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7, 10-12, 14-17, 19 and 21-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Richard, III.

Richard, III (noting particularly Figs. 3, 4, 6 and 7) measures the quality of an A/V signal in the transfer stage over a video network (e.g. col. 1 lines 5-10; col. 4 lines 52-56), wherein the system comprises a physical network interface (NIM: e.g. col. 9 lines 19-21) operable to receive A/V data associated with a video device (STB 311). Richard uses an SNMP complaint device (not shown: col. 7 lines 43-44) to enable communication between the NIM and the diagnostic tools (e.g. MPEG coder: col. 5 lines 62-63) operable to access the A/V data as the A/V data travels through the network (e.g. col. 6 lines 9-15 and lines 35-50), wherein a diagnostic engine (testing jig: col. 11 line 40 – col. 12 line 21) is used to interface the diagnostic tools for determining performance statistics by analysis of the A/V data accessed with the diagnostic tool (noting again col. 6 lines 35-50). The test unit can be located anywhere for diagnosing the network at any of various points (col. 6 lines 11-13) as what one of ordinary skill in the art can consider a node, thereby meeting claims 1, 14 and 21.

As for claim 26, a first video device can be a laser disk player 301 and the second device can be the STB 311.

As for claims 2 and 28, jitter and other performance anomalies are monitored (col. 6 lines 43-45).

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As for claims 7 and 31, the diagnostic tools can be any of various signal processors typically involved with conveying A/V data over a network such as an MPEG coder and decoder (col. 4 lines 52-65; col. 6 lines 23-28).

Regarding claims 10, 11, 15, 16 and 29, a communication agent (e.g. an SNMP) is used for communicating the performance data through the A/V network (col. 7 lines 40-47).

As for claims 12, 17 and 22, the communication agent can be an Internet server since Internet protocol is also an option (col. 7 lines 47-53).

As for claims 23 and 24, a communication agent (e.g. an SNMP) is used for communicating the performance data through the A/V network (col. 7 lines 40-47), as mentioned above.

Considering claim 19, jitter and other performance anomalies are monitored (noting again col. 6 lines 43-45).

As for claim 25, server end can be an Internet server since Internet protocol is also an option (col. 7 lines 47-53), wherein communication between it and the test unit (regardless of the network node locations of the unit) would accordingly be in a client/host relationship.

As for claim 27, the first device is the laser disk player and the second device is an STB that receives A/V data from the first device through the A/V network.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richard, III in view of Wei (of record).

As noted above, Richard points out that he monitors plural parameters and gives several examples but not an exhaustive list. In view of this open-ended allowance, and since packetized data is communicated, it would have been obvious to one of ordinary skill in the art to use a packet sniffer, as used by Wei in his diagnostic system (col. 6 lines 56-58; col. 8 lines 43-46) to identify packet data for monitoring.

6. Claims 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard, III.

Regarding claims 18 and 20, Richard points out that he monitors plural parameters and gives several examples but not an exhaustive list (noting col. 6 lines 43-47 again). In view of this open-ended allowance, it would have been obvious to one of ordinary skill in the art to monitor all parameters involved in A/V communication which may be subject to negative effects. Furthermore, since audio and video components are typically associated with each other for program reproduction, and since Richard accounts for synchronization problems such as jitter, it would therefore have been obvious to monitor mutual synchronization between the audio and video components (i.e. lip synching) and latency, and accordingly provide countermeasures therefor.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant should take particular note of both Goudezeune and Jackson, who both

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measure A/V signal quality with diagnostic modules that can be applied anywhere throughout the network. (The Baina patent is related to the Goudezeune patent).

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor R. Kostak whose telephone number is (571) 272-7348. The examiner can normally be reached on Monday - Friday from 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

**(703) 872-9306 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 308-HELP.



Victor R. Kostak  
Primary Examiner  
Art Unit 2614

VRK